Quid Novi

VOL. II NO. 7 MCGILL UNIVERSITY FACULTY OF LAW OCTOBER 22, 1981

LUS COUNCIL...

National Program Considered

BY DANNY GOGEK

In a report on the Faculty Curriculum Comittee, it was learned at last week's L.U.S. Council meeting that several changes could be made to the Common Law and National Programs. Highlighted among these proposals was a major restructuring of the National Program.

The proposal would mean that all students would cover the first year of Civil and the first year of Common Law, alternating between the two in their first two years. They would then have the option of completing both degrees or opting out of the National Program and completing only one. This would effectively encourage students to identify their committment to the National Program as they entered the school and would mean that students going on to complete just one degree would be more restricted in their choice of electives than those students doing both degrees.

The proposals are currently being debated in a sub-committee of the Curriculum Committee, chaired by Professor Foster. At present, no formal report has been presented to the Curriculum Committee. According to Kevin Nearing, a student member of the sub-committee, every possibility is being considered and the group does not want to overlook any practicable ideas.

Nevertheless, it seems fair to say that the sub-committee has at least reached the conclusion that the National Program has to be more firmly grounded as the unique and significant contribution McGill can make to legal education in Canada. The general sense is that participation in the program has become dilute and that the time has come for the school to take a standbehind it. The proposal, in its working stages, is being considered to meet those objectives.

The sub-committee is meeting twice this week and will likely be issuing a report for the Curriculum Committee some time next week. Tom Johnston, another student member of the sub-committee, emphasized this week that once the sub-committee had forwarded its specific proposal to the Curriculum Committee, wider student participation in discussion of the proposal would be sought. He also noted that any proposal to come out of the Committee would only affect future students.

Taking care of its own business, the L.U.S. Council has temporarily side-stepped the dilemma of the exam schedule by creating a committee that will address the question of whether the practice of an early exam schedule should be continued and how it should be drawn up. This committee will consist of the Class Presidents and is to report back to Council on Nov. 4.

Last week's meeting also gave birth to an "L.U.S. Structural Revision Committee", which is to deliberate upon possible revisions to the L.U.S. Constitution. Among the possible revisions would be a provision for greater independence for the editorial staff of Quid Novi from the L.U.S. Executive. At present, editorial appointments are made by the Executive. In most student newspapers, editorial positions are filled through elections among staff members. Many student societies in recent years have given complete independence to their newspapers.

Finally, a motion to create the "Exam Survey Committee" was carried unanimously. The purpose of this committee will be to consider grade distributions following exams and to investigate any unusual discrepancies between sections in the same course. The committee may also conduct a survey comparing grades among Civil Law Schools in Quebec.

Along the same lines, it was reported that the Exam Board is proposing to publish the median grade for the class or course along with individual marks. It was hoped that this would publicize in an official way course standards at McGill. Recently, LL.B. graduates, for example, have found themselves bringing a copy of the survey comparing the marks of other LL.B schools with marks from McGill when they apply for jobs

In a motion on the subject of exams, the Council strongly approved that the present method of posting grades be dispensed with. This method, which involves the public display of grades to avidly awaiting students was generally described as "barbaric". The consensus was that students should have the option at least to receive grades by envelope. ■

Herbert Marx

Forum National held its first meeting on Monday when Herbert Marx ,Liberal MNA and professor on leave from the University of Montreal Law School, spoke on the constitution and defended his recent vote together with the majority of the Liberal caucus along with the P.Q. in a motion condemning unilateral federal action in light of the Supreme Court decision. Originally, it was planned that the first meeting of the group be a student discussion on the constitution, but thanks largely to the work of Marc Barbeau, Mr. Marx was able to come on short notice.

In analysing the elements of the package and the grounds of disagreement, Mr Marx focussed on patriation, the Charter of Rights, the amending formula, and, in particular, the referendum provisions. He noted that there was no longer any disagreement about the desirability of patriation. Trudeau had been successful in pretending that this was still an issue, but it was not.

As far as the Charter of Rights was concerned, he doubted it would change very much in judicial decision-making, arguing that what was perhaps most substantial about it was its ability to focus national attention on a series of issues which crossed regional lines. In this sense it was a mechanism for

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COMMENT

Compromise or else

The historic decision rendered by the Supreme Court on Monday, September 28th, regarding the federal government's constitutional package contains the seeds of both unity and destruction for Canada. It is important for Canadians during this next round of constitutional negotiations to appreciate the political risks and dangers which lie ahead.

Serious constitutional reform originated in Quebec, and at the very least, any constitutional change must be acceptable in the eyes of a majority of its population. In Alberta, it was important that energy negotiations be resolved to the satisfaction of Albertans. So is the case for the export of potash in Saskatchewan, ofshore resources in Newfoundland, fishing rights in Atlantic Canada, and yes, even the issue of Article 133 of the B.N.A. in Ontario. When a particular issue concerns principally a given region or province in Canada, it is imperative that that region or province be satisfied that the end result is fair and just given the nature of the problem. Equally so, when the nation as a whole finds itself at odds with a province or provinces, it must ensure an equitable compromise.

Quebec is at the heart of this constitutional debate, and in recent times other provinces have joined in. This is not to say that our other nine provinces are not as intensely committed- for they are; however this recent attempt at constitutional reform was a Quebec instigated one, arising out of the referendum held in 1980. Therefore the compromise leading to a "made in Canada" constitution must first sit favourably with a majority of Quebecois. This must be one of the underpinnings of constitutional reform, with of course a majority of Canadians in agreement.

Supreme Court Decision

Many Canadians were undoubtedly disappointed at the fact that the Supreme Court failed to pick a "clear winner, enabling the debate to come to a close. That was a natural reaction, for the media, in large part, suggested that the Supreme Court was the final arbitrator on this matter. While the Court didn't end the debate, it did inject new elements which are crucial to understanding where we are to go from here.

The Court had to deal with three main questions. On the first, the Court was unanimous in holding that patriation, the amending formula or the Charter of Rights and Freedoms would affect provincial powers. On the second question, The Court held that it is a constitutional convention that agreement from the provinces is necessary when provincial powers are altered. To the third question put to the Court to the effect that provincial consent is necessary, the Court split its answer in two. It held firstly that "as a matter of constitutional convention" the provinces must consent. They did not specify whether a majority or all provinces need agree. That point was left open. The other answer was that "as a matter of law" provincial consent is not necessary.

To briefly summarize, the Supreme Court relied on a fundamental principle of constitutional law - that principle being that courts cannot

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building national unity and as such earned his support. But there was no question that the proposed Charter did cut in to provincial jurisdiction and as such required provincial agreement. He urged Mr. Trudeau to step back to the 1978 Bill C-60 position in which the federal government provided for opting-in to a Charter which would otherwise apply to federal jurisdiction. Marx argued that the areas of federal jurisdiction were most pertinent under the Charter in any case. Generally speaking, Marx felt that the federal government was "using the sizzle to sell the steak" in claiming that it was giving rights to Canadians. The steak, as far as he was concerned, was the general referendum procedure for amending the Constitution "hidden" at the end of the package.

Generally speaking, the amending formula, apart from the referendum provisions, was acceptable both as far as the modified Victoria formula was concerned and as far as having a two-year period within which to seek agreement with the provinces or call a referendum to break deadlock was concerned. The problem was with the never before discussed referendum alternative that would be put into the hands of the federal government exclusively. To give the federal government such power to go beyond the heads of the provinces to the people amounted to a substantial alteration of the federal principle.

Mr. Marx spent most of his time answering questions and the issue most pursued was that of his vote in the National Assembly. Mr. Marx rejected out of hand the notion that a representative is always required to vote as his constiuents would want him to vote (he represents D'Arcy Magee, which is Mr. Trudeau's riding of Mont Royal federally). Marx suggested that his belief in the federal principle had been reinforced by the Supreme Court decision and that it was this principle, rather than anything else, which had directed his vote. Alluding to an occasion on which Trudeau found himself agreeing with Duplessis, Marx said that it was unfortunate to have to vote with the P.Q., but that the issue had demanded it. Perhaps this would draw it to the attention of the federal Liberal Party that they were out of touch with Quebec.

On the whole, the Trudeau package was far from being a unifying instrument and an appeal to quebecois. Instead, it was divisive and helpful for the P.Q.. It was Trudeau's intransigence that had forced a federalist like Marx to vote with the P.Q. on the motion. Marx did not care to speculate about what the Quebec Liberal Party would do if Trudeau proceeded unilaterally, saying only that it would create "huge problems".

An organising meeting for Forum National to set up future speakers' programs and debates will be announced next week. It is hoped that those interested in the idea of such a forum will help make this new organisation a permanent feature of the school.

* COMING EVENTS *

October 24-25: Public Colloque and General Assembly of the Association des juristes québécois (AJQ), a regroupment of progressive jurists. 9:30 a.m.-6:00 p.m., YMCA, 1450 Stanley (Peel Metro). Registration fee: $5.00

Delegates from the Office des professions will visit McGill campus on Tuesday, Oct. 27 to meet faculty representatives and students. The meeting for students will be in the Meakins Theatre, entrance from the 5th and the 6th floors, McIntyre Medical Sciences Building, 3655 Drummond at 2:00 p.m. After explaining their proposals, the people from the Office will be available to answer questions relating to the proposals on professional requirements.

HALLOWEEN PARTY: Invitation is from the Faculty of Medicine. At the Annexe, 3708 Peel, Saturday, October 31st. It will start at 8:30 p.m.

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remedy breaches of convention or custom which have not become "law". Courts cannot enforce conventions. In its strictest sense a convention is a pact or agreement bearing the subjective requisites of a contract, but which is not subject to Court sanctions. Therefore, if the federal government were to choose to break with this convention or custom, requiring consent from the provinces, then the Court would be unable to correct or reverse that action. Thus it would not be illegal for Ottawa to act unilaterally for there would be no sanctions or remedies available. In other words, the Court would be powerless to stop Ottawa.

The eight dissenting provinces, on the other hand, won their victory when the Court answered question two in their favour. It was critical for the provincial case that the Court recognize that a constitutional convention did in fact exist - for that means that the federal government must obtain consent from the provinces prior to any changes affecting their powers.

Now you may ask, why does Ottawa require consent from the provinces when it is legal to proceed without them?

Simply stated - there are no consequences if Ottawa chooses to defy the constitutional convention which requires provincial consent. Since the Courts cannnot review breaches of convention, a unilateral request which breaches convention cannot help but be legal.

Ultimately, it is important to recognize that both the federal and provincial governments can legitimately claim a legal victory. In this case there were no losers ... in law anyway.

Due to this state of affairs, the crisis has reached new heights with the Court unable to provide a quick fix solution, the responsibility is back in the hands of the Prime Minister and the Premiers. Unfortunately, recent experience doesn't lend much optimism.

The Political Forum

It may very well be a dangerous course for the Prime Minister to push ahead with his resolution without substantial support from the provinces and especially Quebec. Short of being turned away in London, what are the interests at stake? The Prime Minister's thrust in constitutional reform has been patriation, the amending formula and the entrenchment of a Charter of Rights and Freedoms. The process, however unconstitutional it may be, does not appear to halt his drive. He will, most probably, be prepared to proceed to London, with or without consent from the provinces.

For Premier Levesque, the Charter of Rights and Freedoms or more specifically those clauses which may, at some later date, interfere with the National Assembly's sovereign powers over language and culture are totally unacceptable. He will not, under any circumstances depart form this position. Those clauses, coupled with the unilateral nature of the process, would give the Premier the very arsenal he needs to deliver another round of debate on Sovereignty-Association. For him also, compromise is not a priority. His priority is the preservation of the powers which are now vested with the National Assembly. In addition, as President of the Parti Quebécois, he is striving for sovereignty for Quebec. Nonetheless, given strong public and political opinion supporting his stand, coupled with the issue at hand, this writer cannot help but believe that his interest, first and foremost, is the protection of our National Assembly's powers.

One Solution

Not so many years or even months ago, there was no question of agreement on patriation, let alone on an amending formula or a Charter. Even simple patriation would have been fought tooth and nail. For Quebec, it was a bargaining tool that negotiations and agreements should precede patriation. That position has shifted in the past year. Under pressure, the Levesque government could accept a simple patriation coupled with an amending formula, which would give Quebec a permanent veto as is proposed in the Trudeau package. Such an amending formula would pose no threat to Quebec.

For Trudeau this would be equally difficult. He would have to abandon the Charter of Rights and freedoms for now, and proceed with that phase, once the amending formula was in place. His argument against this is that once the constitution is back, the provinces will never agree. Ironically, Levesque argues that if Quebec's traditional demands await the return of the constitution with the amending formula, the federal government will lose the initiative for further constitutional changes. Both fear deadlock upon our constitution's return. That is an example of how poisoned constitutional negotiations are at this period in history.

To accept patriation with an amending formula would be a difficult pill for each to swallow. Trudeau would be recognized as having brought our constitution home. Given, as he likes to say, that it has taken fifty-four years to patriate, then surely it would be seen as no small feat. Imagine what it would be like to have a) our constitution in Canada, and b) possess an amending formula whereby orderly constitutional changes could take place.

As for Levesque, he could claim victory for having prevented encroachment on provincial powers. In short, Canadians would be left with the British Parliamentary System intact, but with our constitution finally resident in Canada coupled with an amending formula for future changes.

To impose a Charter of Rights and Freedoms, as it is now proposed, will create division and cause distrust. Add to this the discontent with the interpretation Trudeau has given the referendum results and the very real possibility exists that Quebecois will stand together in opposition to him. Thus, the declared objective of strengthening Canadian federalism through constitutional reform will have failed.

The most recent expression of dissatisfaction comes from Claude Ryan who suggests that Ottawa's unilateral action is as distasteful as separation. With the provincial forces now supportive of the P. Q. government's opposition, as expressed in a National Assembly resolution, Trudeau's insistance to proceed with his package to London should be a clear signal for Canadians to recognize the severity of his action and the consequences which will follow in Quebec. So far, we have seen the issue transcend political partisanship.

If unilateral action is taken and a provincial referendum is called on the question at a time when there is unanimity between Levesque and Ryan, the population of Quebec could by a majority reject Trudeau's desire to unilaterally impose a Charter. Trudeau and his Quebec caucus, backed by two successful victories in February and May 1980, coupled with a $1 billion publicity campaign, believe they could convince the public that unilateral action would be beneficial to Quebec. May one suggest that given the National Assembly's opposition to this course of action, there would be a real likelihood that Quebec public opinion would support its provincial government. Trudeau and the federal Liberals may not get the support they have come to expect. It would be a serious political gamble with possible drastic consequences. The scenario reads that too soon after May 20th, and with no jurisdictional question resolved, Parliament moves unilaterally to patriate with a Charter of Rights, while Quebec feverishly

opposes the action.

It is obvious that the entrenchment of a Charter is at the core of the crisis. However, patriation and an amending formula give rise to much less difficulty. As a matter of fact, many observers claim that agreement on the latter is within easy reach. Since this may be in fact the case, then Ottawa and the provinces should move immediately to attain that goal. Patriation and an amending formula would guarantee future constitutional change in an orderly and civilized fashion, rather than this near constitutional anarchy which will pose grave consequences.

Patriation of our constitution must be a constructive, symbolic act signifying co-operation, agreement, trust, respect, and confidence, not suspicion, disunity and the like. If the move is marred by significant discontent then this could spell a renewed attempt to alienate French Canadians from their English partners...

MARC DUGUAY LLBIV

LETTER

TO QUID NOVI:

On November 3rd, the Students' Society of McGill will hold a referendum dealing with the establishment of a Public Interest Research Group (PIRG) at McGill. If the referendum passes, students will pay a refundable fee of $2.50 per term to McPIRG to fund its activities.

A PIRG is a student-run, campus-based organization that aims to relate talents and facilities to social issues that are of public interest. The actual issues that are dealt with are a function of the creativity of its constituents, since they propose and carry them out, but issues are often related to some aspect of the quality of our environment, the value of the food and consumer goods we buy, the status of our civil liberties and the reponsiveness of private corporations and government to the individual citizen.

Generally based on one or more university campuses, the PIRG is administered by a student board of directors elected campus-wide who select research projects which may be proposed by any student. The board will provide funding and other resourses for such projects, the results of which may be published or used as the basis for legal action.

The first public research group was started by Ralph Nader in 1971. There are now more than 200 individual locals across North America. Ontario PIRG, to our west, is a coalition of nine campus groups that has worked on such issues as solar energy, food additives, mercury poisoning and native peoples' rights. As well, it has promoted public education through colloquia on topics like freedom of information, Canada and the arms race and western investments in South Africa. To our south, New York PIRG includes some 20 campuses and cites a long list of highly-regarded, intensely progressive achievements. And just down the street, the Concordia students are organizing a PIRG. (Con-U-PIRG it?)

McPIRG is of particular interest to us as law students as many of the research projects involve the possibility of litigation. The PIRG framework provides an apparatus for lawyers to "take their conscience to work" as Ralph Nader has put it.

Next Wednesday October 28 there will be an information table in the basement of the LUS. The undersigned and one of the co-chairpersons of McPIRG will be on hand to explain the PIRG concept more fully and to provide literature on PIRG activities elsewhere.

RICK GOLDMAN
CATHY GALLANT
KIM RODGERS

MOOT COURT BOARD

The Jessup International Law Moot problem has arrived. This annual competition engages students in written and oral advocacy on complex questions of international law and policy. The competition will take place in the spring in Windsor, Ontario. Those people interested in participating on the 1982 team for the school are referred to further information on the Moot Court Notice Board in the basement. An organizing meeting will be held soon.

The Moot Court Board offers to first-year law students an opportunity to participate in the voluntary moot program. The Moot is an exercise in preparing and arguing an appeal from a trial decision. The object is to defend the client's interests with firmness and conviction. Students are asked to be clear and precise during the oral argument. There is no written submission in the voluntary moot.

The problems will be released on Friday, November 6, 1981. Read your problem over several times. Identify all the legal issues. You will be required to submit a list of cases to the Moot Court Board on Monday, November 9, 1981. Restrict your research to a maximum of ten (10) cases from your casebooks. You need one partner.

There will be an information meeting Thursday, October 22, 1981. Sign-up forms will be posted on the basement level at the Moot Court notice board following the meeting, which is tentatively scheduled for 4:00 PM in the Moot Court.

The Tribunal-école interfaculaire is a mooting competition in which all Quebec's law faculties, as well as the University of Ottawa Law Faculty, are engaged. Each law faculty shall form a team composed of two students. Problems will be given to participants on January 12, 1982, and the deadline to submit the factums is February 12. The semi-finals and finals will be held on March 12 and 13 in Ottawa It should be remembered that two credits are awarded to each student involved in this competition.

Sign-up sheet is on board #9 in the basement.